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BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
RAINIER PLYWOOD COMPANY,

Appellant,

v.

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

Respondent.

PCHB No. 84-48

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal of a \$250 civil penalty for the alleged violation of Section 9.03 of Regulation I, came before the Pollution Control Hearings Board, David Akana (presiding), Gayle Rothrock, and Larry Faulk, at a hearing in Lacey on April 17, 1984.

Appellant was represented by Doug Baum, its Vice President; respondent was represented by its attorney Keith G. McGoffin. Olympia Court Reporter Betty Koharski recorded the proceedings.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Board makes these

FINDINGS OF FACT

I

On April 11, 1983, respondent's inspector observed a blue smoke emission from equipment located at Rainier Plywood Company, 624 East 15th Street, Tacoma. The inspector contacted appellant's employee and advised him of the requirements of Section 9.20 of Regulation I which requires that equipment be maintained and operated in good working condition. A notice of violation No. 18967 was issued for the event. The inspector wrote a letter listing the deficiencies noted in the inspection and requested that all deficiencies be corrected.

On May 24, 1983, respondent's inspector inspected the plant and reviewed the remedial actions taken by appellant.

II

On November 8, 1983, at about 8:02 a.m. while upon routine patrol, respondent's inspector saw a blue/white emission coming from appellant's property. The inspector properly positioned himself and took an observation of the plume. He recorded opacity ratings of 35 to 50 percent for 13 consecutive minutes. Photographs of the emissions were taken at various times.

Respondent's inspector then met appellant's employee at the plant. The employee thought that the cause of the emission was related to the afterburner and the effect of the weather. The employee requested that any notice of violation should be directed to the president of the company.

FINAL FINDINGS OF FACT,  
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Respondent's inspector contacted appellant's vice president by telephone and was asked to mail the notice of violation to appellant.

### III

For the alleged violation, appellant was issued notice of civil penalty No. 5906 for the alleged violation of Section 9.03(b) of respondent's Regulation I. Appeal of the civil penalty was made to this Board on January 26, 1984.

### IV

Pursuant to RCW 43.21B.260, respondent has filed a certified copy of its Regulation I and amendments thereto which are noticed.

Section 9.03 makes it unlawful for any person to cause or allow the emission of any air contaminant for a period totaling more than three minutes in any one hour which is greater than or equal to 20% opacity.

Section 3.29 provides for a civil penalty of up to \$250 dollars per day for each violation.

Section 9.16 provides for reporting of start-ups, shutdowns, unavoidable failures, upsets or breakdowns by an owner or operator. An emission meeting the requirements of that provision is not deemed to be in violation of Regulation I.

### V

WAC 173-400-040(1) makes it unlawful for any person to cause or permit the emission of any air contaminant for more than three minutes in any one hour which exceeds 20% opacity.

FINAL FINDINGS OF FACT,  
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1 WAC 173-400-120(4) requires reports of start-up, shutdown,  
2 breakdown or upset conditions by the operator or owner of a source for  
3 either a planned or unplanned condition. Compliance with the  
4 requirements of the provision does not excuse liabilities for the  
5 failure to comply.

6 RCW 70.94.331(2)(b) provides that an air pollution authority  
7 cannot adopt emission standards less stringent than the state  
8 standards. Air pollution authorities may enforce state regulations.

9 VI

10 Appellant did not comply with the reporting requirements of  
11 Section 9.16 of Regulation I or WAC 173-400-120(4).

12 VII

13 Any Conclusion of Law which should be deemed a Finding of Fact is  
14 hereby adopted as such.

15 From these Findings the Board comes to these

16 CONCLUSIONS OF LAW

17 I

18 Appellant violated Section 9.03(b) of Regulation I and WAC  
19 173-400-040(1) as alleged on November 8, 1983.

20 II

21 The reporting provisions of Section 9.16 of Regulation I and WAC  
22 173-400-040(1) were not complied with by the appellant. Accordingly,  
23 appellant's contention that it should be excused under Section 9.16 of  
24 respondent's Regulation I cannot be sustained.

25  
26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
PCHB No. 84-48

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III

The Board is persuaded that the occurrence on November 8, 1983, at appellant's site was an unexpected occurrence. Given appellant's past record of violations of Regulation I, and the circumstances of this event, the Board concludes that one-half of the \$250 civil penalty should be suspended for one year on condition that appellant not violate any provision of Regulation I for a period of one year.

IV

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

ORDER

The \$250 civil penalty is affirmed, provided however, that \$125 of the civil penalty is suspended on condition that appellant not violate respondent's Regulation I for a period of one year after the date of this order.

DONE this 24<sup>th</sup> day of April, 1984.

POLLUTION CONTROL HEARINGS

David Akana

DAVID AKANA, Lawyer Member

Gayle Rothrock

GAYLE ROTHROCK, Chairman

Lawrence J. Faulk 4/24/84

LAWRENCE J. FAULK, Vice Chairman